

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE

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CLAIMANTS: Jennifer B. Mitchell; Ross P. Mitchell

**CASE 41G-0583-R-2023**  
41G 195563-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

**FINDINGS OF FACT**

1. Claim 41G 195563-00 appeared in the 41G Preliminary Decree with following Department of Natural Resources and Conservation ("DNRC") issue remark:

ON OCTOBER 4, 2001 DOROTHY FREDRICKSON FILED A LATE OBJECTION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE LEGAL DESCRIPTION TO THE SWSENE SEC 26 TWP 01S RGE 05W. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

2. A filing deadline was set for the claimant to comment on how the point of diversion issue remark should be resolved. The order setting the filing deadline explained that claim 41G 195563-00 is a groundwater stock claim located in the SWSENE of Section 26, T1S, R5W. The DNRC changed the point of diversion to the SESWNE of Section 26, T1S, R5W during claims examination. In 2002, the claimant at the time Dorothy Fredrickson filed an objection stating that the point of diversion should be changed back to how it was claimed.

3. A filing deadline was set for Dorothy Fredrickson to indicate whether she would pursue her objection to the claim. Nothing was filed by the deadline and Frederickson was removed from the service list.

4. Information in the claim file, including the statement of claim form and the attached Declaration of Vested Groundwater Rights, indicates that the point of diversion should be corrected from the SESWNE to the SWSENE of Section 26, T1S, R5W. Based on the evidence before the court, the correction better reflects historical use of the claim and resolves the issue remark appearing on the claim. A deadline was set for the current claimants to comment on the proposed correction. The order stated that if nothing was filed by the deadline, the court would conclude that the claimants agree with the proposed correction. Nothing was filed by the deadline.

5. The point of diversion for claim 41G 195563-00 should be corrected to the SWSENE of Section 26, T1S, R5W. The issue remark should be removed from the claim.

### CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that the point of diversion for claim 41G 195563-00 should be corrected to the SWSENE of Section 26, T1S, R5W.

### RECOMMENDATIONS

1. Claim 41G 195563-00 should be modified as described above.
2. The issue remark should be removed from claim 41G 195563-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized database.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Jennifer B. Mitchell  
Ross P. Mitchell  
131 Carney Lane  
Whitehall, MT 59759-9536

Floyd Fredrickson  
Dorothy Fredrickson  
**~~129 Carney Lane~~**  
**~~Whitehall, MT 59759~~**  
***(Return mail received)***

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
JEFFERSON RIVER  
BASIN 41G**

**Water Right Number:** 41G 195563-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROSS P MITCHELL  
131 CARNEY LN  
WHITEHALL, MT 59759 9536

JENNIFER B MITCHELL  
131 CARNEY LN  
WHITEHALL, MT 59759 9536

**Priority Date:** DECEMBER 31, 1935

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** 6.00 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	26	1S	5W	MADISON

**Period of Diversion:** DECEMBER 1 TO APRIL 30

**Diversion Means:** WELL

**Period of Use:** DECEMBER 1 TO APRIL 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				26	1S	5W	MADISON

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

195563-00      195564-00